



# 2015 Annual Report

Office of the Missouri Attorney General - Chris Koster





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## Introduction

I am honored to serve as your Attorney General and to work every day on behalf of Missourians. The Attorney General's Office has had a very successful year representing your interests in 2015. To give you a better understanding of all that our office does to protect Missouri citizens, this Annual Report details what each division of the Attorney General's Office accomplished last year. Here are a few examples:

- The Consumer Protection Division received 108,916 consumer complaints. Complaint volume fell for the second year in a row.
- In 2015, consumer advocates recovered approximately \$9.2 million for consumers by mediating disputes between consumers and businesses.
- The office filed 13 civil cases and 8 criminal cases against individuals and businesses for home-repair fraud.
- This past year the office saw a significant increase in income tax identity theft (1,162) and data breach (239) complaints.
- The office worked on 62 homicide cases, as well as other serious felonies, including: child molestation, sexual abuse, rape, driving while intoxicated, kidnapping, arson, domestic assault, financial exploitation of the elderly, burglary, and public corruption.
- We identified and prosecuted Medicaid fraud cases, obtaining more than \$13 million in judgments and recoveries for the state that had been stolen by Medicaid fraud, as well as obtaining 13 state or federal criminal convictions for Medicaid fraud.
- We protected Missouri's land, air and waterway, working on over 400 legal matters and put in over 2,300 hours of overtime work.
- Our office increased its focus on protecting veterans and military personnel from scams. On Veteran's Day 2015, we released the Military and Veterans Consumer Guide, which provides information on consumer issues that often affect current and former service members.

Thank you for allowing me the privilege of serving as your Attorney General. I invite you to contact my office if there is any way we can assist you.

Respectfully,

A handwritten signature in black ink that reads "Chris Koster".

CHRIS KOSTER  
Attorney General



## Agriculture and Environment Division

**T**he Agriculture and Environment Division aggressively protects Missouri's natural resources. Attorneys take legal action to stop pollution of the state's air, water and soil through injunctions, fines, penalties and in the most serious cases, incarceration.

The division also works to protect and enhance agriculture and the quality of life for rural Missourians by enforcing the law and advocating responsible public policy.

Division attorneys represent the Department of Natural Resources (DNR) and its constituent boards and commissions that regulate the use of the state's air, land and waters. At any given time, the division has about 400 active cases, including enforcement referrals and administrative appeals before the DNR's commissions. Enforcement litigation is filed primarily in state courts where we seek preliminary and permanent injunctions to ensure compliance with Missouri's environmental laws.

### SUCCESS STORIES AND NOTABLE CASES

In 2015, the work of the division, in cooperation with the Financial Services Division, the Department of Natural Resources, the Petroleum Storage Tank Insurance Fund and the Department of Agriculture, resulted in collections received by the state of more than \$8 million in penalties, damages and costs from polluters. In addition, over 40 million dollars was recovered jointly with the federal government and placed in site cleanup accounts.

#### Bridgeton and Westlake Landfill

In March 2013, the Attorney General filed suit against Republic Services, Inc. as a result of a subsurface fire at the Bridgeton Sanitary Landfill in St. Louis County. The fire was creating health and environmental problems affecting the residential and commercial areas around the site. In April 2013,

Attorney General Koster reached agreement on an order that required Republic to pay for temporary accommodations for residents most affected by the odor, and reimburse state agencies for continuous monitoring and sampling of the air and ground at the site. That agreement has been amended, but remains in place and the Attorney General is overseeing compliance with the order.

In 2014, the Attorney General reached agreements for increased monitoring of temperature and carbon monoxide as a method of assessing any movement of the fire and obtained an increase in the amount of reimbursement of state expenses of up to \$1.49 million. In January 2015, the Attorney General filed motions and successfully obtained monitoring in the North Quarry of the landfill. The parties have been engaged in extensive discovery and continue to discuss the final remedy and final penalty.

#### Tronox/Anadarko Settlement

Missouri received approximately \$52 million share of a record \$5.15 billion national environmental bankruptcy settlement reached with Anadarko Petroleum Corporation. Approximately \$6.8 was paid directly to the state as compensation for damage to natural resources. Another \$45.3 million is being held in trust for the cleanup of the company's two former sites in Kansas City and Springfield, both of which had been used for creosote wood treatment, leading to soil and groundwater contamination.

#### Tyson Foods Fish Kill Settlement

On May 16, 2014, a release at the Tyson Foods facility at Monett caused at least 100,000 fish to die. In January, Tyson agreed to the entry of a consent judgment with a total value of \$540,000. Of that, the state received \$162,898 for natural resource damages, \$110,000 in civil penalties, and approximately \$47,000 for costs and expenses. Tyson also paid \$220,000 to replace a low bridge that was having adverse environmental impacts on Clear Creek.



## Ozark Mountain Technologies Consent Judgment

In December 2011, Ozark Mountain Technologies, a metal-finishing company, discharged untreated or improperly treated wastewater in the city of Cuba's water treatment facility. The wastewater was blue-green in color and contained sludge, which eventually entered Pleasant Valley Creek. Missouri Department of Natural Resources inspections discovered several inches of accumulated sludge a quarter-mile downstream. In June 2015, the company agreed to pay the state \$175,000 to resolve the violations, with \$90,000 in civil penalties, another \$82,948.87 for natural resources damage, and the remaining \$2,051.13 for investigative costs.

**7100**

**Animals rescued since January 2009**



## Summit Natural Gas Consent Judgment

In 2013, Summit's installation of natural gas pipelines near Lake of the Ozarks polluted the lake and area streams by allowing large amounts of sediment to enter into the water. In September 2015, Summit agreed to pay \$50,000 in civil penalties and \$142,228 in natural resource damages in settlement of the violations.

## Safe Harbor Animal Sanctuary Consent Judgment

The settlement entered with this facility in May 2015 resulted in the transfer of approximately 200 animals to other facilities and \$26,000 in penalties for violations of Missouri's Animal Care Facilities Act (ACFA). Prior to the settlement, dozens of animals had died because of the facility's failure to seek proper veterinary care. The settlement also required the dismissal of the facility's director, who was prohibited under the agreement from participating in any future ACFA regulated activity. Since the entry of the settlement, the facility has remained in compliance and has had no violations.

## PROGRAMS

The division has filed or appeared in 317 cases and resolved other matters without the need for a filed case. DNR referred 66 violators to the Attorney General's Office. We obtained a total of 57 judgments related to DNR referrals.

The Attorney General, in conjunction with the Department of Agriculture, continued Prosecution

Bark Alert, an effort to eliminate illegal and substandard dog breeding operations.

The Attorney General's

Office has assisted the department in the rescue of over 7,100 animals since the department and the Attorney General began this joint effort.

The division increased its enforcement of the Missouri Underground Facility Safety and Damage Prevention Act (Missouri One Call). The division investigated 121 complaints, resulting in 63 settlements and 1 filed case, with over \$47,000 in penalties assessed. The division also continued its public education efforts, appearing at training events for excavators and utilities.

## Verifiable Collection Amounts

The following are the 2015 figures as of February 5, 2016, for the Agriculture and Environment Division.

In 2015, the office's representation of the Department of Natural Resources resulted in collections of \$8,084,112.10 for DNR, \$951,128.03 of which came from the Doe Run Buick Resource Recycling Facility matter. In addition, \$1,300,000.00 was collected for the Petroleum Storage Tank Insurance Fund from the ConocoPhillips settlement, \$10,213 was collected for the Department of Agriculture and \$46,750 was collected as a result of Missouri One Call violations.

While these dollar figures convey the magnitude of our contribution to the state's financial resources, the value of the environmental clean-ups and pollution control equipment we obtain is far greater - but nearly impossible - to put a monetary value on.



### Additional Information

In 2015 the Agriculture and Environment Division won or settled favorably more than 95 percent of our cases.

The Agriculture and Environment Division worked on over 400 legal matters in 2015 and put in over 2300 hours of overtime work.

The Agriculture and Environment Division opened 636 cases and resolved 266 cases in 2015.

## Consumer Protection Division

The Attorney General’s Consumer Protection Division has moved Missouri toward a more open and honest marketplace since the adoption of the Missouri Merchandising Practices Act 47 years ago. The division seeks to ensure that everyone – businesses and consumers alike – has the opportunity to operate in a marketplace that is free from fraud, deception, misrepresentations, false promises, unfair practices, and unfair competition. The division also serves a vital role in enforcing Missouri’s antitrust, securities, telemarketing, nonprofit, and charitable trust laws.

2015 was a productive for the Consumer Protection Division. The Division responded to 108,916 consumer complaints in 2015: 67,402 fraud complaints and 41,517 no-call complaints. Complaint volume fell for the second year in a row.

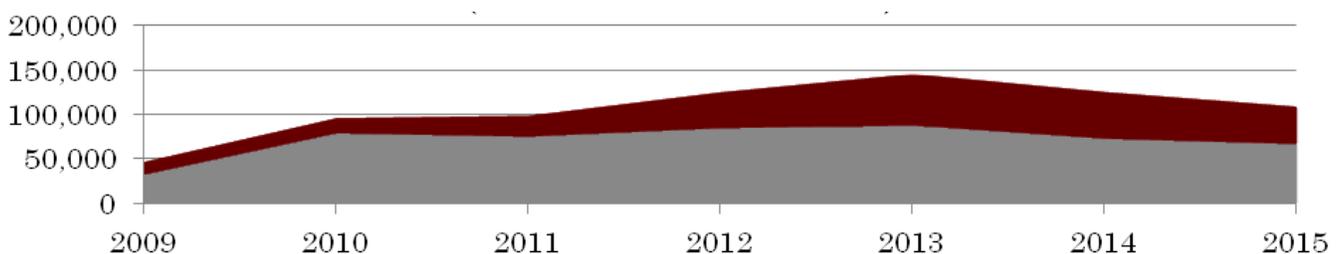
In response to complaints from Missouri consumers (as well as other sources such as law enforcement, other governmental entities, and the press), the Consumer Protection Division mediated 27,775 fraud complaints. Each year, this mediation process results in millions of dollars in restitution for consumers through an exchange of services,

fulfillment of promises, and many other ways that resolve many disputes. In 2015, our consumer advocates were able to reach agreements to settle disputes between businesses and consumers valued at nearly \$9.2 million.

In addition to mediating complaints, the Consumer Protection Division also investigates allegations of fraud, many of which result in formal enforcement actions. In 2015, the Division opened 121 investigations, filed 62 civil and 12 criminal cases, and obtained 86 convictions, formal settlement agreements, injunctions, and/or other judgments. These enforcement actions resulted in monetary judgments of over \$35.5 million. Additionally, throughout 2015, members of the Consumer Protection Division appeared at 94 public and educational events in an effort to prevent fraud through education.

These figures represent the total of all judgments. Default judgments have a significantly lower likelihood of being collected. If default judgments are excluded, the Division obtained judgments of \$36.8 million, with \$27.8 million devoted to consumer restitution.

### Complaints Received (No-Call over Fraud)





## Distribution of Judgments

Consumer Restitution	\$7,786,732.41
Merchandising Revolving Fund	\$5,949,164.22
Antitrust Revolving Fund	\$566,673.60
Penalties	\$1,867,100.00
Deposited into General Revenue	\$21,555,714.00
<b>Total Monetary Judgments</b>	<b>\$35,593,435.60</b>

## 2015 TOP TEN CONSUMER COMPLAINTS

- No-Call and Illegal Telemarketing (41,517 complaints)** - The No-Call Enforcement Unit continued to vigorously prosecute telemarketers for unwanted and illegal calls in 2015. The Attorney General Office's efforts resulted in 17 lawsuits filed, including two federal lawsuits; a 55 percent increase in the amount of fines and penalties collected from telemarketers that violated the Missouri No Call Law (approximately \$610,000); and a 19 percent decrease in the number of complaints from Missourians on the No Call List.
- Solicitations/Publications/Subscriptions (3,528 complaints)** - Consumers continue to file complaints about unwanted mail and phone solicitations regarding sweepstake scams, grandparent scams and other types of solicitation fraud. Most involve scam artists using the promise of a valuable "prize" or "award" to entice consumers to send money, buy overpriced products or services, or contribute to bogus charities. In other types of scams being reported, consumers receive a solicitation that looks like an invoice or bill, trying to fool the consumer into sending payment. The Attorney General's Consumer Division focused on these types of scams in 2015. For example, the division filed suit against Laura Lovrien, Liberty Publishers Services, Inc., and Orbital Publishing Group in March 2015 for sending solicitations for magazine and newspaper subscriptions that appeared to be renewal notices from publishers, but instead resulted in significant price increases for the consumers. Following a Temporary Restraining Order prohibiting these companies from advertising or soliciting for the sale of magazines or newspaper subscriptions, the business shut down operations nationwide.
- Financial (2,353 complaints)** - Many of the complaints under this category involve debt collectors (856). Consumers indicate they have received harassing calls from collectors who repeatedly call in an attempt to collect a debt. Other complaints that fall under this category involved credit/debit card fees, payday loans, credit-repair companies and unauthorized use of credit/debit cards. Some of these complaints involved hidden fees and billing disputes as well.

### Types of Cases Filed

Antitrust	1
General Fraud - Civil	30
Criminal	12
Multi-State	6
No-Call	15
Non-Profit/Charitable Trust	8
Privacy	1



In February 2015, the Attorney General's Office obtained a judgment against the Martin A. "Butch" Webb and his numerous business entities (operating from a Native American reservation in South Dakota) including Payday Financial, Western Sky Financial, and several other names, none of which were licensed to do business in Missouri. These businesses sold short-term loans with exorbitant fees and forced consumers to agree to have their future wages garnished without going through the court system as required by Missouri law. The judgment permanently prohibited Webb or any of his businesses from making or collecting on any loans in Missouri, and it canceled existing loan balances for his Missouri customers, required that Webb instruct credit reporting agencies to remove all information previously supplied to them about specific consumers, and pay \$270,000 in restitution to consumers and \$30,000 in penalties to the state.

- 4. Automotive (1,962 complaints)** - Complaints related to automotive issues made the Top 10 list this year. Some of the complaints alleged consumers paid for repairs and that services provided were shoddy. Consumers reported some repair companies that returned vehicles to the consumer in even worse condition than when the vehicle was taken in to the shop.

One focus of the Division in 2015 was to stop the practice of dealers or their finance companies from holding on to used car titles following sales. For example, when Mylenbusch Auto Sales of St. Charles went out of business, approximately 101 consumers who had purchased vehicles did not receive titles and therefore could not register their cars or legally drive them. The consumer division reached an agreement with the company holding the titles to deliver the titles to the Missouri Department of Revenue to be distributed. The case against Mylenbusch continues.

- 5. Identity Theft (1,669 complaints)** - Identity theft occurs when someone takes another

person's personal information such as Social Security number, date of birth, credit card number, or bank account information and uses the information to commit fraud. This past year the Attorney General's Office saw a significant increase in income tax identity theft (1,162) and data breach (239) complaints.

In response to the drastic increase in identity theft in 2015, the Consumer Protection Division created a new Identity Theft Resource Guide that is available to the public. The guide informs Missourians on steps they can take now to protect themselves from becoming a victim and how to repair the damage caused by identity theft.

- 6. Communications/Technology/Online Services (1,657 complaints)** - A large portion of these complaints involve telephone cramming and billing practices (702). Cramming occurs when consumers receive a phone bill for services that they did not order or find unauthorized fees on their telephone bill from third parties.

Missouri joined a multistate effort to obtain consent judgments against the four largest wireless carriers – Verizon, AT&T, Sprint, and T-Mobile – for adding charges to consumers' bills from third-party vendors for an array of services (e.g. trivia, sports scores, horoscopes, downloadable wallpaper, etc.) that were not authorized by the consumer. The four judgments, issued October 2014 – May 2015, resulted in more than \$354 million in restitution and penalties nationally. Missouri consumers received restitution through national claims processes and the State recovered approximately \$1 million in fines and costs.

Another portion of complaints in this category, cable and satellite complaints (365), involved billing disputes and misleading promotions.

- 7. Real Estate and Construction (1,300 complaints)** - Complaints involving home-repair contractors is our most common type of real-



estate complaint. These complaints often involve con artists going door-to-door, promising to do repair work and insisting on payment up-front, then providing little to no work. Other complaints involve contractors who provide shoddy workmanship or fail to honor warranties.

The Attorney General continues to be aggressive in pursuing contractor scams and those individuals that target our senior citizens. Preventing and correcting home-repair and remodeling fraud were the focus of a major enforcement effort in 2015. The Attorney General's Office filed 13 civil cases and 8 criminal cases against individuals and businesses for home-repair fraud. The office obtained judgments in 22 cases for nearly \$570,000 in restitution and penalties.

**8. Retail/Wholesale (1,258 complaints) -**

Complaints about purchased items increased in 2015. Most of the complaints involved purchases made through the internet, telephone or mail, that had late deliveries or products were never delivered. Other complaints involve the purchases of appliances, furniture and other items where there were warranty problems or defective products. Complaints also involved products not always ringing up at price advertised when the consumer checked out. Other complaints included issues with rebates, coupons, and gift cards.

The Division's largest retail case involved filing an action to hold Walgreen Co. in contempt of court in September 2015 for violating a 2014 consent judgment. Attorney General investigators inspected 50 Walgreens stores across the state July 26th through September 1st and found approximately 1,300 expired sales tags in 49 of the stores, despite a court order in which Walgreens promised to remove tags within 12 hours of their expiration. Hundreds of these tags were weeks past their expiration date, with two that had expired in 2013. Further inspections in October discovered an additional 332 expired sales tags.

**9. Travel/Timeshare (1,125 complaints) -**

Timeshare and travel club complaints continue to increase in Missouri. Most complaints allege consumers were promised guaranteed resale of timeshares, maintenance fees increase continuously, there were undisclosed fees, and that additional services were promised but not provided.

In 2015, the Attorney General's Office filed three travel-related cases. One of those was against Welk Resort Sales, Inc., a California company that sells timeshares in Branson. Consumers complained that they were misled about the benefits of their timeshare ownership and how they could use, cancel or sell their timeshares. Welk agreed to pay \$18,000 in restitution to Missouri consumers who purchased timeshares from Welk. This money will be refunded to 15 Missouri consumer victims.

**10. Health (1,040 complaints) -** In 2015 the Attorney General's Office received complaints concerning billing for hospital and doctor visits, as well as memberships to health clubs. Some consumers reported paying for health club memberships, only to have the club shut down soon after accepting their money.

In one such case, the Attorney General's Office mediated complaints against Belleza Salon and Spa, a St. Joseph-area hair salon and spa. After the salon was vandalized, and pending the resolution of an insurance dispute between the owner and insurance company, the salon closed. Many consumers had purchased gift certificates and service packages that were outstanding at the time of closure. The Attorney General's Consumer Division received more than 25 consumer complaints against Belleza. In response to the office's efforts, Belleza made arrangements for many complainants to take advantage of the service packages they had already purchased at another area salon and offered refunds to those who preferred that method.



## OTHER HIGHLIGHTS FROM 2015

### Addressing Mortgage Backed Securities Fraud that Contributed to the Recession: Standard and Poor's

In February 2015, the Attorney General's Office, along with the Secretary of State's Securities Division, reached a settlement with McGraw Hill Financial, Inc., and its wholly owned subsidiary Standard and Poor's Financial Services, LLC (S&P), resolving the State's claims alleging securities fraud and deceptive business practices. Under the terms of the settlement, S&P paid the state of Missouri \$21,535,714, which was transferred to the state's general revenue fund. Once in general revenue, the settlement funds will be used to support programs throughout the state.

The Attorney General's Office filed suit in February 2013 (in parallel with suits filed by the US Department of Justice, 19 other states, and the District of Columbia), charging S&P with four counts of securities fraud and one count of consumer fraud, alleging that, despite S&P's promise to rate investment opportunities independently and objectively, the rating agency allowed its analysis to be influenced by its desire to earn lucrative fees from its investment bank clients, to the detriment of investors and other market participants. In an effort to drum up more business for S&P, the agency knowingly assigned inflated credit ratings to toxic assets packaged and sold by the Wall Street investment banks. In addition to the financial settlement, S&P agreed to a statement of facts acknowledging conduct related to its analysis of structured finance securities. McGraw Hill and S&P also are required by the settlement to comply with Missouri's consumer protection and securities laws.

### Efforts to Prevent and Prosecute Telemarketing Fraud and No-Call Violations

The Attorney General's Consumer Protection Division put particular emphasis on addressing telemarketing fraud and no-call violations in 2015. In 2015, the no-call unit filed 17 lawsuits and obtained judgments for nearly \$800,000 in penalties and fines. Because of the Attorney General's Office's actions, six companies have been barred from telemarketing in Missouri. Some of the key cases include:

- In October, the office settled a lawsuit filed against California-based Farmers Insurance Exchange, Truck Insurance Exchange and Fire Insurance Exchange ("Farmers"). Under the agreement, Farmers paid \$575,000 to the state of Missouri. This is the largest amount ever paid by a telemarketer for Missouri No-Call and telemarketing violations.
- Following only the second trial ever held under Missouri's No Call and Telemarketing laws, a judgment was filed Good Clean Living, LLC. The defendants were ordered to pay \$65,000 in civil penalties within 90 days of the judgment with \$320,000 in suspended penalties, and were ordered to cease all telemarketing in the state of Missouri.

Other No-Call judgments include:

- Certified LLC, d/b/a Certified Carpet Cleaning, ordered to pay \$60,000 in fines and not to telemarket in Missouri;
- First Defense Security, Inc., et al, agreed to pay \$12,500 in penalties with \$50,000 stayed upon compliance with the terms of an injunction; and
- Pinnacle Home Improvement, LLC, agreed to pay \$20,000 in penalties.



The Division also continues to investigate new complaints and prosecute actions filed in 2015, including the cases against Automated Pro-Marketing and Charter Communications.

The division filed a federal lawsuit in October 2015 against Illinois-based Automated Professional Marketing, LLC; Safety Publications, Inc.; and co-owners Adam Herdman and Arthur Olivera, for violations of federal and state telemarketing and No-Call laws, as well as state merchandising practice laws. Automated Pro-Marketing made calls to Missouri residents on the No-Call list to solicit charitable donations for Firefighters and Paramedics, Inc., Breast Cancer Survivors Foundation, and VietNow National Headquarters. Despite telling consumers that the donations would go directly to the charity, the telemarketing company retained 80-86% of the donations. In addition, the telemarketers violated the federal Telemarketing Sales Rule and Telephone Consumer Protection Act by, among other things, calling consumers after they requested not to be contacted and making calls to cell phones using an automatic telephone dialing system.

Also in October, the division filed a lawsuit in federal court against Charter Communications for violating federal and state telemarketing and No-Call laws. The Attorney General's Office received 350 No-Call complaints about harassing practices by Charter's telemarketers. Many consumers complained about daily calls from Charter, and some consumers reported receiving up to three calls a day. The calls were an attempt to sell Charter's cable, internet and phone services. The suit alleges violations of Missouri's Do-Not-Call and Telemarketing laws as well as the federal Telemarketing Sales Rule and Telephone Consumer Protection Act.





In April, the Missouri and Indiana Attorneys General co-hosted the second annual No-Call Law Enforcement Summit in St. Louis. The summit had more than 65 law enforcement officials in attendance in addition to industry participants. In June, the Federal Communications Commission passed a proposal that allows phone carriers to provide call-blocking technologies to protect their customers from unwanted calls and texts. Prior to the vote, Attorney General Koster and Indiana Attorney General Zoeller sent a joint letter to the FCC encouraging the proposal's passage and following up on a National Association of Attorneys General-issued letter they co-authored asking the FCC to clarify the laws and rules regarding whether telephone companies may offer call-blocking technology to their customers, which 37 Attorneys General signed.

### **Cracking Down on Fake Charities and Charity Scams**

The Attorney General, in his role as a beneficiary of all charitable trusts and in oversight of Missouri's not-for-profits, cracked down on charity scams in 2015.

One important case involved convicting William Harshbarger in St. Louis and St. Charles Counties for stealing money by impersonating a Wounded Warrior Project volunteer outside of discount and grocery stores but keeping all the money for himself. In January 2015, Harshbarger was sentenced to seven years in prison and ordered to pay \$5,000 to the Wounded Warrior Project.





A major enforcement action in the non-profit/charitable trust arena in 2015 was the case against Cancer Fund of America. The division, along with 49 other state attorneys general and the Federal Trade Commission, filed a lawsuit in May 2015 against four so-called cancer charities and their operators, who received more than \$187 million by scamming consumers throughout the country – including cheating Missourians out of at least \$3 million. The states and the FTC alleged the defendants represented themselves as legitimate charities that provide direct support to cancer patients, children with cancer, and breast cancer patients in the United States. In fact, more than 90 percent of consumers' contributions benefitted only the operators, their families and friends, and professional fundraisers. The nationwide group has already reached settlement agreements with two of the corporate defendants: Children's Cancer Fund of America and Breast Cancer Society agreed to judgments representing the amounts consumers donated to them between 2008 and 2012 -- \$30,079,821 and \$65,564,360 respectively. Both corporations were liquidated by a receiver with proceeds used to satisfy the judgments. Three of the individual defendants have also reached settlement agreements.

### **Protecting our Veterans from Consumer Fraud**

The Division increased its focus on protecting veterans and military personnel from scams in 2015. On Veteran's Day 2015, the Attorney General's Office released the Military and Veterans Consumer Guide, which provides information on consumer issues that often affect current and former service members. Topics include predatory lending, debt collectors, mortgage rescue fraud, education fraud, residential scams, landlord-tenant law, identity theft, charity scams, and VA benefit scams. This guide offers current and former service members suggestions on how to prevent becoming a victim of consumer fraud as well as what to do if they are scammed. The guide also contains a list of contacts for federal and state resources that current and former service members can utilize if they have any consumer-related issues.

The division also had half a dozen meetings across Missouri with active duty military personnel to learn about consumer issues that are affecting Missouri's service members and offer training and education opportunities so they can prevent becoming victims of consumer fraud. This is an ongoing and active relationship and many more visits are being planned for 2016. The office has reached out to other state attorneys general and federal partners to understand the issues facing military and veterans in their states. The goal is to identify national trends and be proactive in addressing issues before they harm Missourians.

### **Addressing Auction Fraud**

Two large auction house frauds resulted in criminal prosecutions in 2015.

Malcolm Ivey, the former operator of Ivey-Selkirk Auctions and Appraisals, pleaded guilty in St. Louis County Circuit Court to five Class C felony stealing counts and one Class D felony count of unlawful business practices. As part of the plea agreement, Ivey was ordered pay \$1,139,357.58 to 224 consumer victims and four previous employees of the auction house. Ivey also agreed not to own, work for, or consult for an auction company, or to work in the finance industry. As part of the restitution, Ivey brought a cashier's check to court in the amount of \$110,094.90 to begin to pay restitution to consumers.

Leon MacGregor, Sales Manager/Office Manager of Midwest Public Auction, was bound over for trial on five counts of unlawful merchandising practices in April 2015, following the November 2014 filing of civil and criminal suits for auctions held in Poplar Bluff in which motor sport dealers from across the nation collectively lost more than \$1 million. Midwest Public Auction made unsolicited sales calls to boat, recreational vehicle, powersport, motorcycle, snowmobile, and lawn and tractor equipment dealers, offering to auction the dealers' excess inventory. In numerous cases, items they sold did not return the dealers' minimum approved prices as promised. The civil lawsuit seeks a total of \$1,126,267 in consumer restitution and civil penalties, plus a permanent injunction barring the defendants from doing business in Missouri in the future.



## Criminal Division

In 2015, the Criminal Division filed 735 briefs. The majority of these briefs were filed in felony cases or post-conviction cases challenging felony convictions. A smaller number were sexually violent predator cases and driver's license revocation cases.

Here are several notable cases the division worked on—or that were decided by the courts—in 2015:

### IN THE MISSOURI SUPREME COURT:

#### Capital Cases

The Missouri Supreme Court upheld Jesse Driskill's convictions and death sentences and affirmed his convictions of two counts of murder in the first degree, burglary in the first degree, forcible rape, forcible sodomy, and five counts of armed criminal action. Driskill broke into the home of an elderly couple who were celebrating their 59th wedding anniversary. He shot both victims and he sexually assaulted the female victim.

#### Non-Capital Cases

The Missouri Supreme Court upheld Sylvester Sisco's convictions for first-degree murder, first-degree assault, and armed criminal action. The convictions arose from a 2006 shooting at a Kansas City bar that left one man dead and another man seriously wounded.

The Missouri Supreme Court affirmed Blaec Lammers's convictions for assault in the first degree and armed criminal action. Lammers had purchased assault rifles and ammunition and made statements indicating that he bought the guns to perpetrate a mass shooting.

The Missouri Supreme Court affirmed Justin Jones's convictions for a burglary in the first degree, attempted robbery in the first degree, assault in the third degree, resisting arrest, and armed criminal action. Jones entered a woman's garage with his gun drawn, where he then threatened the woman, and

the Court held that his use of the gun in that fashion was sufficient to support his conviction for armed criminal action.

The Missouri Supreme Court reinstated charges that had been filed against Marcus Merritt, alleging that he had committed three counts of unlawful possession of a firearm (being a felon in possession). The Court held that the felon-in-possession statute was not unconstitutional, and that the new version of article I, section 23 of the Missouri Constitution was not applicable to Merritt's alleged offenses because Merritt had been charged with committing those offenses before the amendment was effective.

The Missouri Supreme Court upheld Santonio McCoy's conviction for unlawful possession of a firearm, holding that the felon-in-possession statute was not unconstitutional, and that the new version of article I, section 23 of the Missouri Constitution was not applicable to McCoy's offense because McCoy had committed his offense before the amendment was effective.

### IN THE MISSOURI COURT OF APPEALS:

The Missouri Court of Appeals affirmed a Phelps County jury verdict finding Ryan Evans guilty of second-degree murder and abuse of a child. Evans was convicted in the beating death of his girlfriend's one-year-old child.

The Missouri Court of Appeals affirmed Jeffrey Moreland's convictions for murder in the first degree and armed criminal action. Moreland had bound his victim and engaged in sexual intercourse with her before shooting her in the back of the head and leaving her naked body in a bathtub. In the subsequent investigation, Moreland provided a DNA sample to the police, but he switched the swabs and turned over DNA from another person. Later, after



Moreland had attempted to commit suicide, a sample of his DNA was obtained, and his DNA matched DNA obtained from the victim's vaginal swab.

The Missouri Court of Appeals affirmed Terry Fritz's convictions for first degree murder and armed criminal action. Fritz murdered his pregnant girlfriend in bed and disposed of her body in a wooded area, where her skeletal remains and a one-inch long femur of their unborn child were later found.

The Missouri Court of Appeals upheld Calvin Taylor's conviction for first-degree murder and armed criminal action. A St. Louis County jury found Taylor guilty of the shooting death of his brother.

The Missouri Court of Appeals affirmed Scott Davis's convictions for assault in the first degree, armed criminal action, and assault in the first degree of a law enforcement officer. Davis had assaulted a woman, and when a police officer arrived, he continued his assault on the officer.

The Missouri Court of Appeals affirmed Ricky Arnold's conviction for attempted enticement of a child. Arnold engaged in several sexually explicit online conversations with "Amber," a person he thought was a fifteen-year-old young woman. He then drove to Higginsville to engage in sexual conduct with "Amber." When he arrived, he discovered that "Amber" was a police officer, and he was arrested.

The Missouri Court of Appeals affirmed Larry White's convictions for two counts of first-degree statutory rape, six counts of first-degree statutory sodomy, and one count of incest. White sexually abused his step-daughter in various ways for a period of years, but when she was ten years old, the step-daughter reported the abuse.

The Missouri Court of Appeals affirmed Derrick Johnson's convictions of three counts of kidnapping, four counts of robbery in the first degree, and seven

counts of armed criminal action. Johnson and a co-actor were running a scam in which they advertised a car for sale on Craigslist and then robbed the people who showed up with money to purchase the vehicle.

The Missouri Court of Appeals affirmed Jeffrey Weinhaus's convictions for possession of morphine and marijuana, assault of a law enforcement officer in the first degree, and armed criminal action. After Weinhaus posted a video online threatening to take over local government and use force if necessary, the police contacted Weinhaus and found drugs in his home. Later, the police arranged a meeting with Weinhaus for the ostensible purpose of returning personal property to him that had been seized during a search of his house. But when Weinhaus arrived at the meeting armed and pulled out his gun to threaten one of the officers, the officers shot him.



## Labor Division

The Labor Division provides general counsel and litigation services for the Missouri State Treasurer in his capacity as custodian of the Second Injury Fund and for the Department of Labor and Industrial Relations in its role administering the Fund. The Division similarly provides general counsel and litigation services for the State's Office of Administration, Central Accident Reporting Office (CARO) in defending workers' compensation claims filed against a multitude of state agencies by their employees.

In 2015, the Labor Division processed 3,330 new claims that were filed against the Second Injury Fund and 895 new claims filed against CARO, or 4225 total new claims. The Division closed 7,491 Fund claims and 839 CARO claims or a total of 8330 claims in 2015.

### TOP CASES AND ISSUES

#### Payment of all Past Due Second Injury Fund PTD Awards

With the passage of Senate Bill 1 in 2013, the revenue going into the Second Injury Fund increased starting January 1, 2014 and will continue ongoing through December 31, 2021. The Director of the Division of Workers' Compensation is allowed during this time frame to collect an additional three percent supplement surcharge for payment into the Fund.

Also as part of Senate Bill 1, a statutory priority of payments from the Fund was created. The priorities are listed as such:

1. Expenses related to the defense of the Fund;
2. Permanent total disability awards in the order in which claims are settled or finally adjudicated;
3. Permanent partial disability awards in the order in which such claims are settled or finally adjudicated;
4. Medical expenses incurred prior to July 1, 2012, under subsection 7 of this section; and
5. Interest on unpaid awards.

During 2015, the Fund made payments on 293 awards and 696 stipulations totaling \$61,517,283.38 and the Fund is now current on the payment of permanent total disability awards and stipulations, meaning that new awards and stipulations are being paid timely. The permanent total disability awards and stipulations were paid current in November 2015 and approximately 50 permanent partial cases were also paid in November 2015. There are currently 6,494 permanent partial awards and stipulations being held for payment and 35 uninsured awards being held for payment. It is strongly believed that many additional permanent partial awards and stipulations will be paid in 2016.

The additional money going into the Fund and the priority of payments set forth in the new statute have essentially ended all civil actions being taken against the Fund for payment of past awards with only one new action being filed in 2015. In that case, an employee is seeking to be paid interest now instead of later when all interest payments will be made.



***Richard Gattenby v. Treasurer of the State of Missouri, Injury Number 14-019986 (Currently before the LIRC) - Eric Lowe***

This is the first case by an Administrative Law Judge (“ALJ”) interpreting the changes to Section 287.220 that went into effect on January 1, 2014. This is an alleged permanent total disability case. The ALJ awarded the employee permanent total disability benefit payments from the Fund. The Fund is appealing this case because the ALJ included the disability from a prior parachute incident, which does not meet any of the criteria for consideration against the Fund, in his determination of permanent total disability. This appeal is currently pending at the Labor and Industrial Relations Commission.

**Monetary Savings**

In 2015, 4,750 claims were dismissed against the Second Injury Fund and 144 were dismissed against CARO for a total of 4894 dismissals obtained. The 2015 calendar year savings by the Labor Division is calculated by multiplying the claims dismissed each month by the average disposition cost per claim for those months.

Using that formula, the total savings by the Labor Division for the calendar year 2015 is \$22,412,472.56.





## Medicaid Fraud Control Unit (MFCU)

**T**he Medicaid Fraud Control Unit (MFCU) prosecutes fraud of the Medicaid program (Missouri MO HealthNet) by healthcare providers, and prosecutes abuse or neglect of Medicaid recipients by caregivers. The MFCU receives referrals or tips on potential Medicaid fraud and patient abuse or neglect from citizens and state agencies. The MFCU investigates these allegations across the state, and collaborates with local, state and federal agencies to prosecute those who steal from Medicaid or harm the vulnerable. In 2015, the MFCU obtained judgments for the state totaling \$13,219,442.25. MFCU investigations also resulted in thirteen federal and state criminal convictions. Three notable cases are highlighted and summarized below:

### ***APS Healthcare***

From 2008 to 2010, APS contracted to provide administrative services for two state Medicaid programs, the Chronic Care Improvement Plan and Administrative Services Organization. Under the two programs, APS was to assist with managing the care for chronically ill Medicaid beneficiaries in Missouri, coordinating their preventive care in order to reduce overall costs related to emergency care. In settlement of a false claims act civil suit, the current owner of APS has paid approximately \$8 million to the state and federal government, of which Missouri's MO HealthNet received over \$3.8 million.

### ***Katherine A. O'Neil***

Katherine A. O'Neil, formerly Katherine A. Thornton, the elected county public administrator in Washington County, pleaded guilty to the felony of Medicaid abuse. Prior to being elected to office, she worked at Georgian Gardens Nursing Center in Potosi as the business office manager in charge of the resident trust fund. An investigation by the Missouri Attorney General's Medicaid Fraud Control Unit found that O'Neil took more than \$13,000 from the resident trust fund while at Georgian Gardens without the consent of recipients, and used the money for her own purposes. O'Neil was ordered

to surrender her office immediately. She was also given a three-year prison term, which was suspended dependent on successful completion of five years of supervised probation, and payment of \$13,359.81 in restitution. O'Neil also faces a possible 120 days in jail, at the discretion of the probation officer.

### ***DEW D Services***

Investigation revealed that DEW D Services, LLC, and its owners, Vonnetta Eiland and Diana Washington, had been paid for services billed without being provided, and lacked adequate documentation. In some instances, care recipients were actually hospitalized during the time for which in-home care services were billed. Under the settlement agreement, DEW D Services paid over \$150,000 in restitution, penalties, and investigation costs.

As Medicaid fraud knows no borders, several civil settlements also resulted from national efforts undertaken by the states through the National Association of Medicaid Fraud Control Units (NAMFCU).



## Public Safety Division

**P**ublic Safety Division attorneys are appointed by the Governor to assist local prosecutors in serious or complex prosecutions, and are appointed by the courts to act as special prosecutors when local prosecutors have a conflict of interest. Additionally, they also:

- Prosecute workers' compensation fraud and noncompliance cases
- Assist with the training of law enforcement officers and state troopers
- Seek the civil commitment of sexually violent predators
- Represent the state in habeas appeals filed by convicted prisoners, including execution litigation in death penalty cases
- Represent the Missouri State Highway Patrol in expungement and Sex Offender Registration Act cases

### SPECIAL PROSECUTIONS UNIT

At the end of 2015, the Public Safety Division had 420 active special prosecutions pending in 102 of Missouri's 114 counties and the City of St. Louis. Attorneys in the Special Prosecutions Unit assist local prosecutors in serious or complex cases when directed by the Governor pursuant to Section 27.030, RSMo, or when they are appointed as special prosecutors by a court when there is a conflict of interest under 56.110, RSMo. The unit received 120 new criminal cases to investigate and prosecute from 57 different counties and the City of St. Louis in 2015.

The unit's attorneys worked on 62 homicide cases, as well as other serious felonies, including: child molestation, sexual abuse, rape, driving while intoxicated, kidnapping, arson, domestic assault, financial exploitation of the elderly, burglary, and

public corruption. Some examples of the cases handled by the unit are highlighted below.

### Homicides

**CASE: *State v. Curtis Smith***

**FACTS:** This prosecution was an assist to Ste. Genevieve County. Defendant Curtis Smith was charged with murder in the first degree for the strangulation death of Kristy Murphy. The defendant had a prior murder conviction from the 1980s. While on parole, he began having homicidal fantasies. Consequently, while involuntarily committed to the University of Missouri Psychiatric Unit, he met the victim, who was also a patient. Following their release from the psychiatric unit, the pair traveled to Ste. Genevieve, Missouri. The defendant strangled the victim with a shower curtain in their hotel room. During trial, the defendant pleaded guilty to Murder in the Second Degree. He was sentenced to life in prison consecutive to the life sentence for which he was on parole.

**CASE: *State v. Thailand Thomas***

**FACTS:** This matter was a conflict case from Jackson County where the defendant was charged with Murder in the Second Degree and Assault in the First Degree. The defendant and three co-defendants robbed a drug dealer. The defendant shot and injured the drug dealer while one of the co-defendants shot and killed the drug dealer's 19-year-old pregnant girlfriend. The defendant was sentenced to twenty-five years of imprisonment in the Missouri Department of Corrections.

**CASE: *State v. Keith Boyles***

**FACTS:** This is an assist case from Ripley County where the defendant is charged with four counts of Murder in the First Degree. Co-defendants include Melissa and David Youngblood, who were husband and wife, along with their daughter Chantele Youngblood. Boyles was living in their home at the time of the murders. David Youngblood devised a



plan to kidnap the Grandin Bank president, take him to the bank to empty the vault and then kill him and his family. During the planning process, David Youngblood decided to do a trial run at the murders. The first trial run was set for Boyles and Chantale Youngblood to kill Youngblood's aunt and uncle then burn their house. This homicide was carried out. Two weeks later they completed another trial run where all four defendants went to another home and killed an elderly couple and then burned their home.

**CASE: *State v. Marvin Rice***

**FACTS:** This case is an assist appointment from Dent County where the defendant is charged with two counts of Murder in the First Degree. The State is seeking the death penalty. Defendant Rice was a deputy at Salem Police Department. During his employment he met an inmate, Annette Dunham. Rice, while married, had extra-marital relations with Dunham and fathered a child with her. After Dunham's release from prison she began receiving visitation with the child. Dunham began to demand more visitation with the child and during a custody exchange Dunham refused to release the child. Rice then shot and killed Dunham and her boyfriend, Steven Strotkamp. Rice then took the child to his wife. After feeling he had the child in a secure location he fled and a high speed chase ensued. During the chase, officers executed spike strips, disabling Rice's vehicle in Jefferson City. Rice ran on foot into the Capital Plaza Hotel during a Christmas party for a medical group. During this time, Rice initiated a shootout with pursuing officers. Rice was apprehended and taken into custody. This matter is currently set for trial on February 3, 2017.

**CASE: *State v. Suan Van Note***

**FACTS:** This case is an assist appointment from Camden County where the defendant is charged with two counts of Murder in the First Degree for killing her father and his fiancé. Defendant shot and stabbed Sharon Dickson to death and shot and stabbed her father, William Van Note. He was conscious when the paramedics arrived. William Van Note was transported to University Medical Center in Columbia, where he underwent surgery for

a gunshot wound to the head. Van Note was placed on life support after surgery. Later that evening the defendant arrived at the hospital and presented hospital staff with a Durable Power of Attorney. She asserted control of his health care plans and requested physicians to remove him from all life saving measures. A review of cellular phone records placed Susan Van Note, who resided in Lee's Summit, near the crime scene and the Durable Power of Attorney was later to be found a forgery. This matter is awaiting trial.

**CASE: *State v. Amanda Lehenbauer***

**FACTS:** This case was a conflict appointment from Marion County where the defendant was charged with Murder in the Second Degree and Robbery in the First Degree for assisting in the robbery and shooting of the clerk at the Able's convenience store in Hannibal, Missouri. Lehenbauer, along with four other co-defendants, were driving around Hannibal and decided they needed money to buy methamphetamine. The defendants devised a plan to stop at Wal-Mart so a male co-defendant could purchase some gloves to be used during the robbery. After the purchase of the gloves they drove to Able's where one co-defendant entered into the store making it appear he was there to purchase something, while the other male co-defendant entered the store, shot the clerk and broke into the cash register. On August 31, 2015, Lehenbauer entered into a guilty plea for Involuntary Manslaughter and Robbery in the Second Degree for exchange of testimony against two of the four co-defendants. Lehenbauer received six years in the Missouri Department of Corrections on each count to run concurrent, in exchange for her testimony against co-defendants.

**CASE: *State v. David Weil***

**FACTS:** This case is an assist matter from Chariton County where the defendant was charged with Murder in the Second Degree. The defendant and the victim, John Piper, engaged in a verbal argument that resulted in the defendant stabbing the victim in the neck. The defendant entered a plea of guilty to the reduced charge of Voluntary Manslaughter



for a term of 15 years consecutive to the sentence of five years he is currently serving on other charges. Weil was also charged with Assault in the First Degree and Domestic Assault with a ten-year term in the Missouri Department of Corrections to run consecutive to the Voluntary Manslaughter prosecuted by our office. Finally, Weil also received a seven-year sentence to the Missouri Department of Corrections for Assault of a Jailor and Unlawful Use of a Weapon. This sentence is to run concurrent to his other sentences.

**CASE: *State v. Kevin Tilson***

**FACTS:** This case was a conflict appointment from Pemiscot County but was moved on a change of venue to New Madrid County. The defendant was charged with Murder in the Second Degree and Armed Criminal Action stemming from the 2013 murder of Rodney Maxwell. The defendant requested the victim meet him, with the plan of robbing him. When the victim arrived, defendant approached his truck, robbed him, and then shot him one time severing an artery. The victim fled and lost consciousness while driving and struck a tree. Victim was found later by law enforcement and pronounced dead at the hospital. The jury found the defendant guilty and he was later sentenced to twenty-five years in the Missouri Department of Corrections.

**Violent Crimes**

**CASE: *State v. Cody Weter***

**FACTS:** This matter is a conflict case from Benton County. Weter was charged with Unlawful Use of a Weapon, Assault, Felonious Restraint and Sexual Abuse for confining and terrorizing one of his romantic partners in 2013. Weter was convicted of Unlawful Use of a Weapon, Misdemeanor Assault and Felonious Restraint. He was sentenced to five years, six months, and 12 years on each – for a total of 17 years in the Missouri Department of Corrections.

**CASE: *State v. Michael Dorton***

**FACTS:** This matter is a conflict appointment from Ray County, where the defendant is charged with the

assault of his mother. Law enforcement and medical personnel responded to a female bleeding from a head injury. The defendant told law enforcement he believed their pet monkey did it. It was later determined that the defendant engaged in a domestic disturbance with his mother and struck her in the head with a hammer. The defendant entered a plea of guilty to Assault in the First Degree and Armed Criminal Action with a cap of 15 years in the Missouri Department of Corrections.

**CASE: *State v. Richard Whipple***

**FACTS:** This matter was a conflict appointment from Audrain County, but the matter was tried in Montgomery County on a change of venue. The defendant was charged with two counts of Unlawful Use of a Weapon, Tampering in the First Degree, and three counts of Assault in the Third Degree for an incident that occurred in June of 2014. The defendant and the victims engaged in a verbal exchange over a stolen bicycle. The disagreement escalated and the defendant fired a firearm into the victim's vehicle while children were present. This matter was tried and the defendant was found guilty of all counts and sentenced to fifteen concurrent years in the Missouri Department of Corrections.

**Fraud/Public Corruption/Stealing**

**CASE: *Grand Juror Doe v. McCulloch*, United States District Court and *Grand Juror Doe v. McCulloch*, St. Louis County**

**FACTS:** On January 1, 2015, a state grand juror for the investigation of the matter known as State v. Darren Wilson, the Ferguson Police Officer who shot and killed Michael Brown, sought a declaratory judgment that Missouri laws criminalizing the juror's disclosure of information about the grand jury experience are unconstitutional as applied. The juror alleged Missouri statutes violate free speech rights under the First Amendment. On May 5, 2015, a federal judge granted the State's Motion to Dismiss, on the doctrine of abstention. The court held that "abstention in the present case could avoid unnecessary federal interference in the State of Missouri's administration of its grand jury



system. How Missouri manages its criminal justice proceedings and how it employs and supervises its grand juries is an area of fundamental importance to a sovereign state. Federal intervention would interfere with Missouri's procedures and policies in an area of special state interest, that is, the control, use, and structure of its grand jury system." On June 1, 2015, the juror filed a rule 59(e) motion to alter or amend the judgment, and attached as an exhibit a new complaint against McCulloch filed in state court. On June 23, 2015, the federal judge issued an order denying the juror's motion. The juror appealed to the 8th Circuit Court of Appeals, which remanded the case to district court.

**CASE: *State v. Marty Rainey***

**FACTS:** This is a conflict cases referred from Gasconade County. Defendant was a law enforcement officer with Gasconade County Sheriff Department and solicited sexual acts and intercourse from females connected to various investigations. Defendant Rainey has been recently charged with acceding to corruption by a public servant, sexual assault, statutory rape in the second degree and use of child in a sexual performance. On May 18, 2015 a grand jury indicted Rainey on five additional counts of Forcible Rape and one count of child molestation.

**CASE: *State v. Herbert Miller***

**FACTS:** This matter was a conflict case from Perry County where the defendant was charged with Stealing over \$25,000, and Financial Exploitation of the Elderly. The defendant was the Coroner for Perry County and local funeral home director. He was asked by the victim, Marcella Wucher, to maintain a Durable Power of Attorney to pay for her care at a nursing home facility. Wucher had been diagnosed with dementia and cognitive disabilities leaving her unable to care for herself. While Wucher was in the nursing home, the defendant abused his authority and wrote checks to himself and to his funeral home from Ms. Wucher's personal account. The final amount taken was \$80,600.00. The defendant was sentenced in July of 2015 to seven years in the Missouri Department of Corrections, but the execution of his sentence was suspended, and he

was placed on probation for a term of five years and ordered to pay \$80,600.00 in restitution.

**CASE: *State v. Bradley O'Neal***

**FACTS:** This conflict case was tried in Caldwell County on a change of venue from Saline County. The defendant, a former sheriff's deputy, was charged with an attempted sexual assault for events occurring on December 29, 2011. O'Neal went to a convenience store with a friend of his wife and, on the way home, drove her into a field and attempted to sexually assault her. O'Neal told the victim that no one would believe her story because he was a police officer. O'Neal was found guilty and sentenced to four years' incarceration. The execution of the sentence was suspended and he was placed on five years' probation. Special conditions of probation include 120 days' shock incarceration and payment of \$5,000 in restitution to the victim.

**CASE: *State v. Claudia Albright***

**FACTS:** This was a conflict case from Johnson County where the defendant was charged with felony stealing. Between September, 2005, and May of 2006, the defendant conducted a systematic scheme of stealing money from the Monserrat Winery by writing unauthorized checks, stealing cash from the cash register, and funneling money to her boyfriend, after gaining the trust of the business owner. The jury found the defendant guilty on one count of felony stealing. The defendant was sentenced to seven years' imprisonment; the execution of the sentenced was suspended and she was place on five years of supervised probation, and ordered to pay \$34,000 in restitution.

## **Child Crimes**

**CASE: *State v. Thomas Haviland***

**FACTS:** This is a conflict matter from Texas County. Haviland was charged with one count of Child Molestation in the First Degree with one victim, an eleven year-old daughter. Haviland was accused by two other victim children for out-of-state sexual misconduct – the content of which was ruled admissible by the trial court under a 2014 admissibility amendment of Article I, Section 18(c).



Haviland pleaded guilty to Child Molestation in the First Degree and was sentenced to eight years in the Missouri Department of Corrections.

**CASE: *State v. Amanda Reynolds***

**FACTS:** This is an assist matter from Grundy County where defendant is charged with 39 counts of Sexual Misconduct involving a child. The defendant, along with her husband, performed multiple sexual acts on two minor children. During many of the acts, the defendants photographed and videotaped the crimes. The victims were the minor children of the defendants. Following a plea agreement, the defendant entered a plea of guilty to Statutory Sodomy with a term of 20 years' imprisonment and an additional 20-year term for Sexual Exploitation of a Minor Child, to run consecutively.

## EXPUNGEMENTS

The Division of Public Safety for the Attorney General provides legal assistance to the Missouri State Highway Patrol in civil actions under Chapters 577 & 610 RSMo for persons seeking expungement of their arrest or conviction for various criminal offenses. These civil actions often require multiple briefs and a bench trial on the merits.

In 2015, attorneys in Public Safety defended 47 civil expungement cases across the state. Thirty of these cases denied relief to the plaintiff. The division also resolves appeals in these matters and represented the Missouri State Highway Patrol in eight appeals of ordered expungements.

## WORKERS' COMPENSATION FRAUD AND NONCOMPLIANCE UNIT

The Workers' Compensation Fraud and Noncompliance Unit prosecutes fraud and misconduct involving workers' compensation insurance. This Unit takes seriously its obligations to the state's business community to hold accountable those individuals who steal from our workers' compensation system and undermine a sound business climate.

Unit attorneys take action against employees attempting to fraudulently obtain workers' compensation benefits, and against employers who violate the law by not obtaining mandatory workers' compensation insurance. Additionally, the Unit attempts to recover restitution for injured workers, insurance companies and the State's Second Injury Fund.

In 2015, the office received 260 referrals related to workers' compensation fraud and noncompliance. As of December 31, the office had 66 pending criminal prosecutions. During 2015, the office filed 42 new criminal cases and obtained 24 successful dispositions in filed criminal cases. For the year, \$718,285.54 was collected in fines and penalties against violators in non-compliance cases, along with a total of \$73,973.03 collected in fines, penalties and restitution for victims in fraud cases.

## SEXUALLY OFFENDER REGISTRY

The Division of Public Safety for the Attorney General provides legal assistance to the Missouri State Highway Patrol in civil actions under §589.400 RSMo for persons seeking to remove themselves from the Missouri Sexual Offender Registry (SORA). These civil actions often require multiple hearings, depositions of victims, and ultimately a bench trial on the merits.

In 2015, attorneys in Public Safety defended 34 SORA cases across the state. Five cases were dismissed without removal by the court, and two cases were granted. Twenty-seven actions are still pending. The division also resolves appeals in these matters and is currently representing the Missouri State Highway Patrol in two appeals of ordered removals.

## SEXUALLY VIOLENT PREDATOR UNIT

The Sexually Violent Predator (SVP) Unit seeks civil commitment of sexual predators who suffer from a mental abnormality making them more likely than not to commit additional predatory acts of sexual violence.



In 2015, attorneys prosecuting SVP cases secured the civil commitment of 16 sexually violent persons. Attorneys for the unit appeared in 27 different counties around the state. Eight of the commitments were obtained by jury trial. The predators included lifetime child molesters and sadistic rapists.

At the end of the year, attorneys in the unit had 41 active cases pending adjudication by trial, and there were a total of 240 people committed to the Department of Mental Health under the SVP law. None of these predators will be released into Missouri communities until that person's mental abnormality no longer causes them to be likely to commit sexually violent offenses. A few notable cases included:

**CASE: *In re Isadore Lowery (St. Louis City)***

**FACTS:** Lowery was a diagnosed sexual sadist, aroused by pain, violence and humiliation of his victims. In 1992, Lowery kidnapped a 31-year old woman for three days, torturing and violently sodomizing her with household objects. Lowery would restrain and lock his victim in a trunk, and on return beat her so badly her skin turned black. The victim escaped by cutting her bonds with a hidden razor blade when Lowery left his house. When arrested, Lowery boasted the case would probably not go anywhere because the victim would not show. Earlier in 1992, Lowery had been arrested for kidnapping and sexually assaulting two other women, beating one in the legs with a hammer. In 1994, Lowery was arrested again for kidnapping and sodomizing a 25-year old victim. In prison he repeatedly was caught with simulated child pornography, including handwritten statements of his desire to rape children from newspaper clippings. He refused sex offender treatment.

**CASE: *In re Carl Kirk (Henry County)***

**FACTS:** As a teenager, Kirk kidnapped and raped three children on different occasions: a 5-year old boy, 10-year old boy, and 10-year old girl. At age 22 he was convicted for sexually abusing an 11-year-old boy and released on parole in 1987. Eighteen days later, he sodomized a 10-year-old boy. After technical

completion of the prison sex offender therapy program, he was paroled in 2011 but returned in less than a year for engaging in his deviant cycle of re-offense.

**CASE: *In re Jay Nelson (Jackson County)***

**FACTS:** Nelson was repeatedly arrested in the 1980s for numerous acts of violence and burglary, including two reports of rape in 1982. In 1988, he broke into a victim's home, raped her, and beat her so severely she was permanently disfigured. The police caught Nelson raping his victim and he was convicted in 1989. In prison, he engaged in 55 acts of sexual misconduct and threatened sexual violence to female staff, promising to hurt them when he got out of prison. Nelson did not complete treatment.

**CASE: *In re Bradley Lewis (Stoddard County)***

**FACTS:** In 2004, Lewis molested an 8-year-old girl at a family gathering in a room with other children who were watching a movie. During the investigation, another child, an 8-year-old boy, disclosed he had been sodomized by Lewis repeatedly in the past. In 2005, Lewis pleaded guilty to a reduced charge of sexual misconduct in the first degree and was placed on probation and in community sex offender treatment. Four months later, he molested a 5-year-old girl at an animal sanctuary. In 2013, he was released on parole. Two months later, a 13-year-old child reported Lewis solicited her for sex and his parole was revoked.

**CASE: *In re Jason Branham (Lawrence County)***

**FACTS:** In 2001, Branham sodomized his 4- and 5-year-old daughters and infected one victim with a chronic sexually transmitted disease. Previously, in 1999 he was investigated for molesting two 6-year-old children, a niece and nephew, over a period of years. In 2000, he was sentenced to probation for molesting his niece, age 14 at the time. His probation was revoked months later for having sexual contact with two female children, ages 14 and 15, and he served six months in jail. Branham stipulated to commitment, having noted that he is addicted to underage kids.



## HABEAS UNIT

Attorneys in the Habeas Unit defend the warden in habeas corpus actions filed by inmates in custody in state prisons. The actions are filed in the state and federal courts, and challenge the fact or length of confinement or the imposition the death penalty. The unit also defends other civil suits such as declaratory judgment actions and civil rights suits that challenge the length or duration of confinement of Missouri prison inmates or that may impact the imposition of a death sentence.

During 2015, attorneys in the unit defended the state's interest in 462 new cases in state and federal courts. The number of new cases increased in federal and state courts. Habeas Unit attorneys defended these actions in federal district courts in Missouri, the United States Court of Appeals for the Eighth Circuit and the United States Supreme Court. Habeas Unit attorneys also defended actions in the Missouri trial courts, Missouri Court of Appeals and the Missouri Supreme Court.

During the past year the Habeas Unit successfully litigated matters of great importance including:

**CASE: *Wilbanks***

**FACTS:** This habeas case upheld imposing consecutive sentences with total parole ineligibility period exceeding juvenile non-homicide offenders' life expectancy.

**CASE: *Nash v. Russell***

**FACTS:** This habeas case upheld first degree murder convictions imposed by this office and upholds Missouri's directed-evidence rule barring evidence that a third party was the real killer absent direct connection to corpus delicti of murder.

**CASE: *Zink v. Lombardi***

**FACTS:** In this habeas matter the 8th Circuit upheld the constitutionality of Missouri death penalty procedures.

**CASE: *State ex rel Hodges v. Asel, et al.***

***State ex re. Mammen v. Chapmen***

**FACTS:** In a case of first impression, Petitioners James Hodges and Robert Mammen, chronic driving while intoxicated offenders, both sought mandamus relief demanding their immediate release on probation pursuant to §217.362, Missouri's long term treatment drug statute. The offenders claimed that §217.362 required their immediate probation release since the Department had determined that they successfully completed the long-term substance abuse treatment program. The Missouri Supreme Court held that §217.362, did not require the immediate release of individuals who were sentenced as a "chronic offender" pursuant to section 577.023.6(4), but instead such offenders were ineligible for probation release until they satisfied their two-year mandatory minimum sentence requirement.

**CASE: *Barnes v. Missouri Department of Corrections***

**FACTS:** The Missouri Court of Appeals affirmed Cole County Circuit Court, and reaffirmed that the Department of Corrections is not required to give jail-time credit for time spent on probation when the probation-revocation judge does not grant probation time credit.

**CASE: *Thornton v. Denny***

**FACTS:** The Missouri Court of Appeals, Western District, granted habeas relief, finding that the driving-while-intoxicated enhancement rule announced by the Missouri Supreme Court in *Turner v. State*, 245 S.W.3d 826 (Mo. 2008) should have been applied to Thornton's sentencing.



## EXECUTIONS

In 2015, the Habeas Unit successfully defended and completed six (6) executions. The following are summaries of the crimes those inmates committed:

**1. Walter Timothy Storey – Executed February 11, 2015**

Murder: Beat, stabbed, robbed and slit the throat of neighbor

On February 2, 1990, Storey took a knife from his kitchen, climbed the balcony of his neighbor Jill Frey, entered her apartment, hit her in the face and head twelve times, broke six of her ribs, stabbed her in the side, then slit her throat twice. He took her purse and stole her car. The next day, he went back to Frey's apartment using the stolen keys, tried to wipe his fingerprints, cleaned under Frey's fingernails with her toothbrush and threw her keys in the lake behind her apartment. When Frey failed to appear for work, her co-workers came to check on her. They found her body in the bedroom.

**2. Cecil L. Clayton – Executed March 17, 2015**  
Murder: Shot police officer in forehead at point-blank range

On November 27, 1996, Clayton met his estranged girlfriend at a store in Purdy, Missouri. While at the store, the couple argued loudly and police were called. After a Purdy police officer arrived at the store, Clayton and the woman left separately. Clayton went looking for her, ending up at mother's house. Police were called to the home. Officer Christopher Castetter arrived in a patrol car. As Officer Castetter began to roll down his driver's window, Clayton walked up to the patrol car and shot him in the head at point-blank range. Officer Castetter's car struck Clayton's truck before striking a tree. Officer Castetter died from the gunshot wound at a local hospital.

**3. Andre Cole – Executed April 14, 2015**  
Murder: Enraged by child support payments, he stabbed his ex-wife and fatally stabbed her friend with a kitchen knife

Andre and Terri Cole were married for 11 years and had two children together. They divorced in 1995 and argued over child support and visitation. In 1998, he was \$3,000 behind in child support. On August 21, 1998, Cole learned that child support was about to be automatically withheld from his paycheck. Hours later, he broke into his ex-wife's house by throwing a tire jack through a glass door. He was confronted by Anthony Curtis, a friend of Terri's. Andrew Cole used a kitchen knife to repeatedly stab Curtis and Terri Cole. Curtis died later from the wounds, however Cole survived the attack.

**4. Richard Strong – Executed June 9, 2015**  
Murder: Fatally stabbed his girlfriend (21 stab wounds, 5 slashes) and her two-year-old daughter (9 stab wounds, 12 slashes)

On October 23, 2000, St. Ann police received a 911 call from the apartment of Eva Washington, where she lived with her 2-year-old daughter Zandrea and her 3-month-old daughter Alyshia., who was Strong's child. The call was disconnected before the 911 dispatcher could speak to the caller. When police arrived, Strong said Eva was sleeping. A minute later, he told police she was at work. Due to the inconsistent answers, police forced entry into the apartment and found Eva and Zandrea stabbed to death in a bedroom. Alyshia was sitting on a bed next to a pool of blood and the butcher knife that was used to kill them. The tip of the knife was still embedded in Eva's head.

**5. David Zink – Executed July 14, 2015**  
Murder: Abduction, sexual assault and killing of Amanda Morton



Zink was convicted and recommended for a death sentence in the 2001 killing of Amanda Morton. Zink abducted her after hitting her car from behind on an Interstate 44 exit ramp a mile from her Strafford home. Morton was driving home after visiting a friend. Just months before the slaying, Zink had been released from a Texas prison after serving 20 years on rape, abduction and escape charges. Fearing that his drunken fender-bender with Morton could violate his parole and send him back to prison, Zink abducted Morton, taking her to a motel. Zink, after being arrested at his parents' home, led authorities to Morton's buried body in a cemetery, confessing matter-of-factly. An autopsy showed Morton had eight broken ribs and 50 to 100 blunt-force injuries. She also had been sexually assaulted, with DNA evidence linked to Zink found on her body.

**6. Roderick Nunley –**

**Executed September 1, 2014**

Murder: Abduction, sexual assault and killing of female juvenile, Ann Harrison

In the pre-dawn hours of March 22, 1989 Nunley and his co-defendant Michael Taylor (Executed-February 26, 2014) were bingeing on cocaine and stole a car. The two men were driving around Kansas City when they saw the victim, Ann Harrison (age 15) with her school books and flute on the ground next to her, waiting for the school bus. Ann's mother had stepped back inside the home to prepare a younger child for school and when she heard the bus pull up, she looked out the window only to see that Ann's books and flute were there, but Ann was gone. Nunley and Taylor had abducted Ann and transported her to Nunley's mother's home where they raped, sodomized and then stabbed her repeatedly in the neck and stomach. The two then placed Ann's lifeless body into the trunk of the car and abandoned the vehicle in a residential area. Ann was found three days later.

## VICTIM SERVICES UNIT

The Victim Services Unit provides assistance to crime victims with compassion and respect to help them understand their options, minimize their trauma, and stabilize their lives. Advocates serve victims of crime and their families across the State of Missouri through home visits, court accompaniment and in helping them obtain victim compensation and other support as needed. Dealing with the aftermath of a violent crime can be overwhelming, and the unit employs two full-time victim advocates to help reduce stress and make sure the rights of crime victims are honored, as well as to insure that they have a strong voice in the criminal justice system.

In 2015, the unit served 462 victims in criminal prosecutions, making 1,712 different individual contacts.



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